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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To regulate information brokers and protect individual rights with respect
to personally identifiable information.

IN THE HOUSE OF REPRESENTATIVES

Mr. MARKEY introduced the following bill; which was referred to the
Committee on _____

A BILL

To regulate information brokers and protect individual rights
with respect to personally identifiable information.

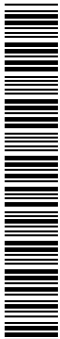
1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Information Protection
5 and Security Act”.

6 **SECTION 1. CONGRESSIONAL FINDINGS; PURPOSE.**

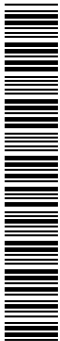
7 (a) FINDINGS.—Congress finds the following:



1 (1) Entities commonly known as “information
2 brokers” have created up to several billion personal
3 records on individuals.

4 (2) Information made available by information
5 brokers is used in the determination of opportunities
6 for credit, employment, housing, insurance, means of
7 travel, and other commercial decisions, and must
8 therefore be as accurate, transparent to the indi-
9 vidual, and secure as possible. Inaccurate informa-
10 tion pertaining to an individual that is made avail-
11 able by an information broker may significantly
12 interfere with the individual’s economic opportuni-
13 ties. For these reasons, there is a vital need to en-
14 sure that information brokers exercise their impor-
15 tant responsibilities with fairness, impartiality, accu-
16 racy, and respect for individuals’ rights to privacy
17 and security, and that information brokers properly
18 safeguard individuals’ personally identifiable infor-
19 mation.

20 (3) In 2004, an identity theft operation improper-
21 ly gained access to hundreds of thousands of indi-
22 vidual profiles maintained by one large information
23 broker. Many of these individuals have and will be-
24 come victims of identity theft. The full extent of this
25 incident will not be known for years.



1 (4) Identity thieves illegally exploit information
2 technology to take advantage of innocent individuals.
3 Identity thieves typically steal individuals' names,
4 addresses, telephone numbers, social security num-
5 bers, bank account information, and personal finan-
6 cial and medical data. Due to identity thieves mis-
7 using this personal information, some individuals are
8 denied jobs, faced with debts that are not their own,
9 and arrested for crimes they did not commit.

10 (5) According to the Federal Trade Commis-
11 sion, 10,000,000 Americans were affected by iden-
12 tity theft in 2004, and the problem is growing worse.
13 Identity theft is now the most common fraud per-
14 petrated on individuals. In 2004, identity theft ac-
15 counted for 39 percent of consumer fraud com-
16 plaints filed with the Federal Trade Commission.

17 (6) According to a survey cited by the Federal
18 Trade Commission, identity theft cost the United
19 States \$52,600,000,000 in 2004. Both individuals
20 and businesses bear this heavy financial burden.

21 (7) The increasing power of computers and in-
22 formation technology has greatly magnified the risk
23 to individual privacy that can occur from any collec-
24 tion, maintenance, use, or dissemination of person-



1 ally identifiable information, as well as the number
2 of individuals who can be harmed.

3 (8) There is a clear difference between a com-
4 pilation of personally identifiable information and
5 the compilation's component parts. Even for infor-
6 mation contained in public records, items of data
7 that appear in widely scattered sources are different
8 from the collection and assembly of that information
9 into databases, reports, or profiles. The interest in
10 maintaining the privacy and security of such data-
11 bases has always been, and will continue to be, very
12 high.

13 (9) In order to protect the privacy and security
14 of individuals whose personally identifiable informa-
15 tion resides in systems maintained by information
16 brokers, it is necessary and proper for Congress to
17 regulate the collection, maintenance, use, and dis-
18 semination of such information by information bro-
19 kers by adopting a framework of fair information
20 principles. It is the policy of Congress that informa-
21 tion brokers have an affirmative and continuing obli-
22 gation to protect the privacy and security of an indi-
23 vidual's personally identifiable information.

24 (b) PURPOSES.—The purposes of this Act are—



1 (1) to regulate the narrow category of business
2 entities commonly known as “information brokers”,
3 but not to extend the regulations to businesses other
4 than information broker businesses, or to weaken or
5 alter the protections provided by other applicable
6 laws;

7 (2) to protect individual rights in relation to in-
8 formation brokers; and

9 (3) to ensure that information brokers compete
10 fairly in the processing and sale of personally identi-
11 fiable information.

12 **SEC. 2. REGULATION BY FEDERAL TRADE COMMISSION.**

13 (a) REGULATIONS.—

14 (1) IN GENERAL.—Not later than 6 months
15 after the date of enactment of this Act, the Federal
16 Trade Commission (in this Act referred to as “the
17 Commission”) shall promulgate regulations with re-
18 spect to the conduct of information brokers and the
19 protection of personally identifiable information held
20 by such brokers.

21 (2) CONTENT OF REGULATIONS.—The regula-
22 tions promulgated under paragraph (1) shall include
23 rules—

24 (A) requiring that procedures for the col-
25 lection and maintenance of data guarantee



1 maximum possible accuracy of personally identi-
2 fiable information held by any information
3 broker;

4 (B) allowing an individual the right to ob-
5 tain disclosure of all personally identifiable in-
6 formation pertaining to the individual held by
7 an information broker, and to be informed of
8 the identity of each entity that procured any
9 personally identifiable information from the
10 broker;

11 (C) allowing individuals the right to re-
12 quest and receive prompt correction of errors in
13 personally identifiable information held by in-
14 formation brokers;

15 (D) requiring information brokers to safe-
16 guard and protect the confidentiality of person-
17 ally identifiable information, appropriate to the
18 nature and type of information involved;

19 (E) requiring information brokers to au-
20 thenticate users before allowing access to per-
21 sonally identifiable information, and requiring
22 that each use of personal information is em-
23 ployed only for a lawful purpose;

24 (F) requiring procedures to be established
25 to prevent and detect fraudulent, unlawful, or



1 unauthorized access, use, or disclosure of per-
2 sonally identifiable information held by an in-
3 formation broker, and to mitigate any potential
4 harm to individuals from threats to the privacy
5 or security of such information;

6 (G) requiring information brokers to estab-
7 lish and maintain procedures that track users'
8 access to personally identifiable information
9 held by the broker, and the lawful purpose for
10 which each access was made; and

11 (H) prohibiting information brokers from
12 engaging in activities that fail to comply with
13 the Commission's regulations.

14 (b) DEFINITIONS.—In this section:

15 (1) INFORMATION BROKER.—

16 (A) IN GENERAL.—The term “information
17 broker” means a commercial entity whose busi-
18 ness is to collect, assemble, or maintain person-
19 ally identifiable information for the sale or
20 transmission of such information or the provi-
21 sion of access to such information to any third
22 party, whether such collection, assembly, or
23 maintenance of personally identifiable informa-
24 tion is performed by the information broker di-



1 rectly, or by contract or subcontract with any
2 other entity.

3 (B) EXEMPTIONS.—The Commission, in
4 promulgating regulations under subsection (a),
5 may exempt any commercial entity from such
6 regulations, in whole or in part, if the Commis-
7 sion determines that granting such an exemp-
8 tion is in the public interest, consistent with the
9 purposes of this Act, and if the entity's collec-
10 tion, assembly, and maintenance of personally
11 identifiable information is only incidental to the
12 entity's primary business.

13 (2) PERSONALLY IDENTIFIABLE INFORMA-
14 TION.—The term “personally identifiable informa-
15 tion” means any personal information, as deter-
16 mined by the Commission, which may be used to
17 identify a person or cause harm to such person.

18 **SEC. 3. ENFORCEMENT.**

19 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
20 SION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of a regulation promulgated
23 under section 2 shall be treated as a violation of a
24 regulation under section 18(a)(1)(B) of the Federal



1 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) re-
2 garding unfair or deceptive acts or practices.

3 (2) POWERS OF COMMISSION.—The Commis-
4 sion shall enforce the regulations promulgated under
5 section 2 in the same manner, by the same means,
6 and with the same jurisdiction, powers, and duties
7 as though all applicable terms and provisions of the
8 Federal Trade Commission Act (15 U.S.C. 41 et
9 seq.) were incorporated into and made a part of this
10 Act. Any person who violates such regulations shall
11 be subject to the penalties and entitled to the privi-
12 leges and immunities provided in that Act. Nothing
13 in this Act shall be construed to limit the authority
14 of the Commission under any other provision of law.

15 (b) ACTIONS BY STATES.—

16 (1) CIVIL ACTIONS.—In any case in which the
17 attorney general of a State has reason to believe
18 that an interest of the residents of that State has
19 been or is threatened or adversely affected by an act
20 or practice that violates any regulation of the Com-
21 mission promulgated under section 2, the State may
22 bring a civil action on behalf of the residents of the
23 State in a district court of the United States of ap-
24 propriate jurisdiction, or any other court of com-
25 petent jurisdiction, to—



1 (A) enjoin that act or practice;

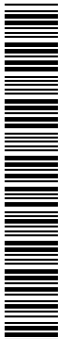
2 (B) enforce compliance with the regulation;

3 (C) obtain damages, restitution, or other
4 compensation on behalf of residents of the
5 State; or

6 (D) obtain such other legal and equitable
7 relief as the court may consider to be appro-
8 priate.

9 (2) NOTICE.—Before filing an action under this
10 subsection, the attorney general of the State involved
11 shall provide to the Commission and to the Attorney
12 General a written notice of that action and a copy
13 of the complaint for that action. If the State attor-
14 ney general determines that it is not feasible to pro-
15 vide the notice described in this subparagraph before
16 the filing of the action, the State attorney general
17 shall provide the written notice and the copy of the
18 complaint to the Commission and to the Attorney
19 General as soon after the filing of the complaint as
20 practicable.

21 (3) COMMISSION AND ATTORNEY GENERAL AU-
22 THORITY.—On receiving notice under paragraph (2),
23 the Commission and the Attorney General each shall
24 have the right—



1 (A) to move to stay the action, pending the
2 final disposition of a pending Federal matter as
3 described in paragraph (4);

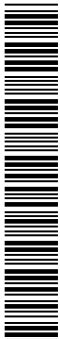
4 (B) to intervene in an action under para-
5 graph (1); and

6 (C) to file petitions for appeal.

7 (4) PENDING CRIMINAL PROCEEDINGS.—If the
8 Attorney General has instituted a criminal pro-
9 ceeding or the Commission has instituted a civil ac-
10 tion for a violation of this Act or any regulations
11 thereunder, no State may, during the pendency of
12 such proceeding or action, bring an action under this
13 subsection against any defendant named in the
14 criminal proceeding or civil action for any violation
15 that is alleged in that proceeding or action.

16 (5) RULE OF CONSTRUCTION.—For purposes of
17 bringing any civil action under paragraph (1), noth-
18 ing in this Act shall be construed to prevent an at-
19 torney general of a State from exercising the powers
20 conferred on the attorney general by the laws of that
21 State to conduct investigations, administer oaths
22 and affirmations, or compel the attendance of wit-
23 nesses or the production of documentary and other
24 evidence.

25 (c) PRIVATE RIGHT OF ACTION.—



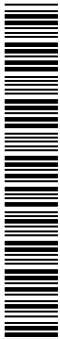
1 (1) IN GENERAL.—Any individual injured by an
2 act in violation of the regulations promulgated under
3 section 2, if otherwise permitted by the laws or rules
4 of the court of a State, bring in an appropriate court
5 of that State—

6 (A) an action to enjoin such violation;

7 (B) an action to recover for actual mone-
8 tary loss from such a violation, or to receive up
9 to \$1000 in damages for each such violation,
10 whichever is greater; or

11 (C) both such actions.

12 (2) LIMITATION.—An action may be com-
13 menced under this subsection within 2 years after
14 the date on which the alleged violation occurred, ex-
15 cept that where a defendant has materially and will-
16 fully misrepresented or disclosed any information
17 under this Act or the regulations promulgated pur-
18 suant to this Act and the information so misrepre-
19 sented or disclosed is material to the establishment
20 of the defendant's liability under this Act or such
21 regulations, the action may be brought by the indi-
22 vidual under paragraph (1) at any time within 3
23 years after discovery by the individual of the mis-
24 representation or disclosure.



1 (3) NONEXCLUSIVE REMEDY.—The remedy pro-
2 vided under this subsection shall be in addition to
3 any other remedies available to the individual.

4 **SEC. 4. RELATION TO OTHER LAWS.**

5 (a) FAIR CREDIT REPORTING ACT.—Nothing in this
6 Act or the regulations promulgated under this Act shall
7 be construed to modify, limit or supersede the operation
8 of the Fair Credit Reporting Act. A person or entity sub-
9 ject to the Fair Credit Reporting Act shall comply with
10 that Act as well as with this Act and the regulations pro-
11 mulgated under this Act. To the extent that there is any
12 conflict between the Fair Credit Reporting Act and this
13 Act or such regulations, the Act that affords an individual
14 greater protection shall apply. Multiple requirements with
15 respect to the same information, transaction, or individual
16 shall not be considered a conflict.

17 (b) STATE LAWS.—This Act and the regulations pro-
18 mulgated under this Act shall not be construed as super-
19 seding, altering, or affecting any statute, regulation,
20 order, or interpretation in effect in any State, except to
21 the extent that such statute, regulation, order, or interpre-
22 tation is inconsistent with the provisions of this Act or
23 the regulations promulgated under this Act, and then only
24 to the extent of the inconsistency. For purposes of this
25 section, a State statute, regulation, order, or interpreta-



1 tion shall not be considered inconsistent with the provi-
2 sions of this Act or the regulations promulgated under this
3 Act if the protection such statute, regulation, order, or in-
4 terpretation affords any person is greater than the protec-
5 tion under this Act or the regulations promulgated under
6 this Act.

7 **SEC. 5. REPORT.**

8 Not later than 12 months after the issuance of the
9 regulations required by section 2, the Commission shall
10 transmit to Congress a report on the information broker-
11 age industry and its impact on the privacy of personally
12 identifiable information. Such report shall describe the
13 regulations promulgated pursuant to this Act, compliance
14 with such regulations by the information brokerage indus-
15 try, and any recommendations by the Commission for ad-
16 ditional measures (including any necessary legislation) to
17 ensure the privacy of personally identifiable information.

